IN THE HIGH COURT OF UTTARAKHAND ATNAINITAL

Reference Application No. 07 of 2005

Commissioner of Central Excise. Meerut –II,
Through Addl. Commissioner (Legal), Central Excise Meerut-II,
Opp. Shaheed Park, Delhi Road, Meerut (UP) ...Applicant

Versus

M/s Polyplex Corporation Ltd. Khatima, Udham Singh Nagar
...Respondent

Sri Arvind Vashisth, learned Asstt. Solicitor General for the applicant
Sri S. K. Posti, learned counsel for the respondent.

Dated: November 16, 2007

Coram: Hon. P.C. Verma, J
Hon. Dharam Veer, J.

This Reference Application has been preferred by the Revenue against the judgment and order dated 14.06.2002 passed by Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi in Appeal No. E/1268/2002-NB(SM) whereby the appeal filed by the Revenue was rejected.

2- The following questions of law have been sent for our opinion by the Tribunal:

1- ***"Whether Modvat credit on rejected goods is admissible under Rule 57-A on the strength of the party's own invoice when such goods were returned to the party's unit and the party brought it back without observing procedures as law down under Rule 51-A of the Central Excise Rules, 1944?***
2- ***Whether goods received by the party under cover of their own invoice originally issued at the time of clearance of such goods are valid documents for availing of Modvat credit under Rule 57-A of the Rules ibid?"***

3- Brief facts of the case are that M/s Polyplex Corporation Ltd. Khatima, U. S. Nagar is engaged in the

manufacture of Polyster film. Proceedings were initiated against the party by the Assistant Commissioner, Central Excise Range-II, Khatima, Distt. U.S. Nagar vide show Cause Notice dated 29.7.1999 with the allegation that they availed Modvat credit of Rs. 1,98,621/- during the period December, 1998 to March, 1999. Another show cause notice dated 22.7.1999 was issued by Assistant Commissioner, Central Excise Range-II, Khatima, Distt. U.S. Nagar for the period March, 1999 to May, 1999 with the allegation that the party had availed Modvat credit of Rs. 1,68,707/- on the returned goods against their own invoice without filing D-3 intimation. On adjudicating both the show cause notices, the Deputy Commissioner, Central Excise Division, Rampur confirmed demand of Rs. 3,67,328/- and also imposed penalty of Rs.3,67,328/-. In the appeal preferred by the assesses, the Commissioner (Appeals), Customs & Central Excise, Ghaziabad vide order dated 20.02.2002 allowed the appeal and set aside the order passed by Deputy Commissioner, Central Excise Division, Rampur. Against the order of the Commissioner (Appeals), appeal was preferred by the Revenue before the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi, who vide impugned judgment and order dated 11.06.2002 rejected the appeal preferred by the Revenue and confirmed the order passed by Commissioner (Appeals). Feeling aggrieved, the Revenue has preferred the present reference before this Court.

4- We have heard Sri Arvind Vashisth, learned Asst. S.G. for Union of India and Sri S.K. Posti, learned counsel for the respondent and have gone through the impugned judgments and orders passed by the courts below.

5- We have also gone through the facts of the case as well as judgment and order dated 20.2.2002 passed by Commissioner (Appeals) and impugned judgment and order dated 14.6.2002 passed by Customs, Excise & Gold (Control) Appellate Tribunal. In our opinion, questions framed in the Reference Application have rightly been decided by the Commissioner (Appeals) as well as by the Tribunal and do not require to be considered by this Court. The Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi after relying on the judgment passed by its larger Bench in the case of *Hindalco Industries V. CCE* Allahabad **reported in 2000(38) RLT 986** has rightly held that the assessee's are eligible to take credit of the duty paid on the final products in case where such final products are subject to melting and remanufacture.

6- We do not find any infirmity and illegality in the aforesaid view taken by the Tribunal. Therefore, the Reference Application is disposed of in favour of the Firm and against the Revenue. The impugned order dated 14.06.2002 passed by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi is upheld.

(Dharam Veer, J.) **(P.C. Verma, J.)**

Rajeev Dang